

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : 16-CR-00254(BMC)  
:  
-against- : United States Courthouse  
: Brooklyn, New York  
:  
ROBIN ALAN FULLER, : Monday, September 11, 2017  
: 11:00 a.m.  
Defendant. :  
:  
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TRANSCRIPT OF CRIMINAL CAUSE FOR FATICO HEARING  
BEFORE THE HONORABLE BRIAN M. COGAN  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

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Proceedings

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1 (In open court.)

2 (Judge BRIAN M. COGAN enters the courtroom.)

3 THE COURTROOM DEPUTY: All rise.

4 THE COURT: Good morning, have a seat, please.

5 (Defendant enters the courtroom.)

6 THE COURTROOM DEPUTY: United States versus Fuller.

7 Counsel, please state your appearances for the  
8 record, starting with the Government.

9 MS. PENZA: Moira Kim Penza for the United States.

10 Good morning, Your Honor.

11 With me at Counsel table is Tyler Smith, Victoria  
12 Main from United States Probation and Steven Mullen,  
13 Department of Homeland Security Investigations.

14 THE COURT: Good morning.

15 ALL: Good morning.

16 MR. SOLOWAY: Good morning, Your Honor.

17 Robert Soloway for Robin Fuller. I apologize for  
18 being ten minutes late.

19 THE COURT: No problem, I was running a little late  
20 myself, it worked out fine.

21 Good morning.

22 Good morning, Mr. Fuller.

23 THE DEFENDANT: Good morning.

24 MR. SOLOWAY: One thing. My client has demanded  
25 that before any, most respectfully, Judge, before any

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1 proceedings commence, that I move that the indictment be  
2 dismissed in its entirety on the basis of the Government  
3 knowingly preferring and endorsing false information  
4 specifically relating to the e-mails which the Government has  
5 lately turned over that resulted in the stop at JFK.

6 That's my understanding of his application, so I am  
7 presenting it, Judge.

8 THE COURT: Okay.

9 I do not even think I have the power to dismiss the  
10 indictment when the defendant has already pled guilty. I  
11 think he would have to move to vacate his guilty plea and then  
12 move to dismiss the indictment, although I suppose that could  
13 be both done at the same time. But even if I had the power, I  
14 would deny the motion.

15 We have a number of factual issues to resolve in  
16 connection with sentencing. There is at least one that will  
17 require the presentation of evidence and that is the issue of  
18 whether the defendant had sex with his daughter and, if he  
19 did, whether she was a minor at the time. So, that is one  
20 issue.

21 We then have the issue of whether the defendant has  
22 been fabricating his health conditions. I am not sure there  
23 is going to be evidence beyond the documents I have received  
24 from both sides on that.

25 Then we have a number of objections that predecessor

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1 Counsel for Mr. Fuller raised to the PSR, which are also  
2 factual in nature.

3 I think we should address the first issue first,  
4 since that involves a civilian witness. Let's get that one  
5 done and out of the way and then we can talk about the order  
6 of the proceeding as to the others.

7 Does that sound all right?

8 MS. PENZA: Yes, Your Honor.

9 MR. SOLOWAY: Yes, Your Honor.

10 THE COURT: All right.

11 The Government may call its first witness.

12 MS. PENZA: The Government calls Nanette Fuller.

13 (Witness enters and takes stand.)

14 THE COURTRoom DEPUTY: Please, raise your right  
15 hand.

16 **N A N E T T E      F U L L E R ,**

17 called as a witness having been

18 first duly sworn, was examined and testified  
19 as follows:

20 THE COURTRoom DEPUTY: Please, state and spell your  
21 name for the record.

22 THE DEFENDANT: Nanette Fuller -- N-A-N-E-T-T-E ,  
23 F-U-L-L-E-R .

24 THE COURTRoom DEPUTY: You may be seated.

25 THE WITNESS: Okay .

N. Fuller - direct - Penza

5

1 THE COURT: All right, you may inquire.

2 DIRECT EXAMINATION

3 BY MS. PENZA:

4 Q Good morning, Ms. Fuller.

5 How old are you?

6 A Thirty-seven.

7 Q What is your date of birth?

8 A 6/30/1980.

9 Q Do you currently work?

10 A Yes.

11 Q What do you do?

12 A I'm transportation coordinator warehouse, schedule  
13 outbound truck loads.

14 Q How long have you been doing that type of work?

15 A About 13 years.

16 Q And have you been working your entire adult life?

17 A Yes.

18 Q What level of education have you achieved?

19 A I have a bachelors degree, but I've been working on my  
20 masters.

21 Q What did you receive your bachelors degree in?

22 A Operations and supply chain management.

23 Q Where did you receive that?

24 A Franklin University.

25 Q When did you receive that?

N. Fuller - direct - Penza

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1 MR. SOLOWAY: I'm sorry, I didn't catch that.

2 THE COURT: Can you repeat your answer.

3 THE WITNESS: Franklin University.

4 MR. SOLOWAY: Thank you.

5 Q When did you receive that?

6 A 2013.

7 Q Do you have any children?

8 A Two.

9 Q How old are they?

10 A Ten and sixteen.

11 Q What are your parents' names?

12 A Robin Fuller and Esther Fuller.

13 Q Do you see your father in the courtroom today?

14 A Yes.

15 Q Can you please identify an article of clothing he's  
16 wearing?

17 A It's like a green jump shirt, jumpsuit.

18 MS. PENZA: Your Honor, may the record reflect that  
19 Ms. Fuller has identified the defendant as her father.

20 THE COURT: It does.

21 Q How long did you last see your father?

22 A About 18 years.

23 Q Do you have any siblings?

24 A A brother.

25 Q How would is your brother?

N. Fuller - direct - Penza

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1 A Thirty-five.

2 Q When you were growing up, did your parents work?

3 A I remember my mom working off and on, but I don't  
4 remember my dad working.

5 Q What did your mom do for employment?

6 A Like home health care, nursing aide.

7 Q You said you don't remember your father working.

8           What did he do for money?

9 A Social Security Disability.

10 Q And what was his disability?

11 A Muscular dystrophy.

12 Q Do you remember ever going to doctors with your father?

13 A No.

14 Q Would you ever go to waiting rooms?

15 A Yeah, I would sit in like, a waiting room or hospital ER  
16 room.

17 Q Did your father ever tell you about any visits with  
18 doctors regarding his Social Security Disability?

19 A Not when I was little, but when I was a teenager.

20 Q Okay. What would he tell you when you were a teenager?

21 A That he had to get a form filled out each year to say  
22 that he was still disabled to keep getting his disability.

23 Q And would doctors fill out those forms?

24 A Yes, for most of the part.

25 Q Did he ever have any trouble getting those forms filled

N. Fuller - direct - Penza

8

1 out?

2 A There was one time when we were in Boise, Idaho.

3 Q And we'll talk about that later.

4 Did you move around a lot as a child?

5 A Yes.

6 Q Why was that?

7 A From my understanding, it was either we were getting  
8 evicted or he was -- later I would hear that he was  
9 classified military.

10 Q Starting from when you were born until approximately age  
11 twelve, where did you live?

12 A Between Arizona, Idaho and California.

13 Q And with whom did you live?

14 A Always with my dad.

15 Q Okay. Did you also live with your mother sometimes?

16 A She would come and go.

17 Q Were your parents married?

18 A Until I was about twelve.

19 Q Can you describe your day-to-day life as a child?

20 A I basically go to school and go home. I learned to be  
21 seen and not heard; like, I never had friends. It was just, I  
22 just kept to myself.

23 Q Why was that?

24 A My dad didn't trust people.

25 Q Okay. Did he tell you why he didn't trust people?

N. Fuller - direct - Penza

9

1 A No.

2 Q Were you allowed, as a child, to participate in any  
3 activity outside of the house?

4 A Not when I was young.

5 Q Were you allowed to have any friends?

6 A Not that I remember.

7 Q Did any friends ever come over to your house?

8 A No.

9 Q What types of rules were in place in your house as a  
10 child?

11 A Beyond that, I just remember my dad always like, eating  
12 first. My mom would have to serve him his food and then, what  
13 was left, she would give to my brother and I.

14 Q And what would she eat?

15 A If there was any left, she would eat some, but sometimes  
16 she would just go hungry.

17 Q Can you describe the relationship between your parents?

18 A It was really rocky. They would scream and yell a lot.

19 Q Did you ever witness any physical abuse?

20 A I never witnessed it, but I would see the marks.

21 Q Okay. Are there any incidents you remember from your  
22 childhood, your parents fighting in particular?

23 A The one that I remember the most was my mom was having  
24 like, female issues and he wouldn't let her, he wouldn't take  
25 her to the hospital and she ended up having to like, crawl out

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1 of the house because she was in so much pain and a friend of  
2 hers took her to the hospital.

3 Q What happened once she went to the hospital?

4 A She ended up having surgery.

5 Q Did you ever witness any violence from your father  
6 towards anyone else in the household?

7 A My brother.

8 Q Okay. Can you tell me about that?

9 A Probably about once a month my dad, he always wore a  
10 leather belt and if he didn't like something my brother said  
11 or did, he would take his belt off and make my brother pull  
12 his pants down and underwear down to his ankles, and he would  
13 take the belt to his butt.

14 Q And what side of the belt would he use?

15 A Most of the time it had the buckle part.

16 Q Okay. And how many times?

17 MR. SOLOWAY: Your Honor, excuse me. I apologize.  
18 I think Mr. Fuller wants to address the Court about his  
19 inability to remain in the courtroom listening to all of this  
20 perjury and he is demanding that I alert you to that fact,  
21 Judge; notwithstanding that he has a right to be here and  
22 listen.

23 THE COURT: Well, I think he has a right to absent  
24 himself if he wants to.

25 THE DEFENDANT: I'm told I can't respond or anything

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1 or have a right to anything. I've been told to shut up.

2 THE COURT: You do not have the right to speak,  
3 Mr. Fuller, that is true. If you would care to take the stand  
4 later, your attorney can put questions to you and you can  
5 answer questions, but you cannot interrupt a witness's  
6 testimony.

7 So, it is really up to you. You are strongly  
8 discouraged from leaving. It is your Constitutional right to  
9 be here and hear the testimony, but if you are going to  
10 absolutely insist on leaving, I will not require you to stay.

11 Let's continue.

12 By MS. PENZA: (Continuing)

13 Q Ms. Fuller, how many times would your father hit your  
14 brother when he would hit him?

15 A Two or three times, up to ten or more, depending on how  
16 angry he was.

17 Q Okay. And from what time period is this, from what ages?

18 A My brother would have been about ten. So, between ten  
19 and fourteen.

20 Q And what would your father say to your brother before he  
21 would hit him?

22 A I don't really remember what he said. I just remember  
23 hearing a lot of yelling.

24 Q Okay. And you said -- did he tell him to take his  
25 underwear down as well?

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12

1 A Yes, yes.

2 Q Other than on the buttocks, did your father ever hit your  
3 brother anywhere else?

4 A There was one time where my brother was resisting and he  
5 stuck his foot up, and his -- my dad's wrist, hit his foot and  
6 made him angry, so he just started hitting harder and it got  
7 him across his back.

8 Q How many times during that incident, how many times did  
9 your father hit your brother?

10 A It was quite a few. I, I, I'd say at least ten.

11 Q Okay. And that again, was that with the buckle side?

12 A It was a combination.

13 Q Okay. And was there something, did your brother have an  
14 injury to his back prior to that incident?

15 A Yeah. When my brother was born, he had an extra bone  
16 connecting his shoulder blade to his backbone in some way, and  
17 went to Shriners Hospital and had surgery when he was about  
18 six or so. He was really little. And it made his, part of  
19 his back really weak, so he was told that he couldn't take  
20 sharp hits to his back.

21 Q Were there any marks left on your brother's body after  
22 your father would hit him?

23 A The only time I saw him was when he hit him on his back  
24 and he had some welts on his back.

25 Q Did your father ever hit you?

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13

1 A One time when I was really little.

2 Q Okay. What do you remember from that incident?

3 A I just remember I had to do the same thing, pull my pants  
4 down and underwear down, and lean over a bed, and he hit me  
5 just a couple times.

6 Q Okay. After that, did he ever hit you again?

7 A No.

8 Q Why not?

9 A Because I learned to be quiet and not say anything and  
10 not fight back.

11 Q What would you do when your brother was being hit?

12 A I would hide in my room.

13 Q What did your mother do while your brother was being hit?

14 A She wasn't around.

15 Q And why do you think your brother was hit so often  
16 compared to you?

17 A Because my brother was vocal.

18 Q Did your father, was your father ever verbally abusive to  
19 anyone in the family?

20 A My mom. I mean, he was always yelling at someone, so.

21 Q Okay. After you turned twelve, where did you move?

22 A Arizona. Casa Grande Eloy.

23 Q And why did you move there?

24 A I don't know why.

25 Q Okay. Did you stay in Arizona until you graduated high

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14

1 school?

2 A Yes.

3 Q When you moved to Arizona, where did they place you in  
4 school?

5 A I started off in eighth grade, but I was only there for a  
6 couple months. They were still far behind my level of  
7 education that they placed me up into 9th grade.

8 Q Okay. So, for the remainder of your time in Arizona,  
9 were you always one grade level ahead of your age?

10 MR. SOLOWAY: Objection, leading.

11 THE COURT: Sustained.

12 Q For the rest of high school, what grade did you stay in  
13 compared to your age?

14 A I was always a year ahead.

15 Q Did you participate in -- when you were in Arizona, who  
16 did you live with?

17 A My dad, most of the time, but I would spend a few weeks  
18 or a few months at a time with my grandparents.

19 Q Whose parents were they?

20 A My dad's parents.

21 Q Can you describe for me your relationship with your  
22 paternal grandparents?

23 A My grandfather and I were really close. My grandfather  
24 was like, they would always follow us around every time we  
25 moved and I always felt like my grandfather protected me. My

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1 grandfather, I don't remember, he never really got along with  
2 my dad.

3 Q How about your grandmother?

4 A But my grandmother supported my dad.

5 Q Were you allowed to participate in any activities in  
6 middle or high school?

7 A In middle school I started to run track one time, but I  
8 hurt my ankle and, and once I did that, I wasn't allowed to go  
9 do track again.

10 And then I did marching band but only because my  
11 grandfather paid for my instrument and got me started.

12 Q What was your father's reaction to you participating in  
13 the band?

14 A He didn't like it. He wouldn't participate or help at  
15 all. I had to get rides.

16 Q Going back to track.

17 Can you tell me what happened when you got injured?

18 A Oh. I went to the hospital and I had like, a hairline  
19 fracture on my ankle. And they wanted to finish breaking it  
20 so they could set it correctly and he wouldn't let them do it,  
21 said they were just out to get more money, made them do just  
22 the minimum and then took me home.

23 Q And how is your ankle now?

24 A It's still weak. Like, it twists real easy.

25 Q When you were a child, did you receive regular medical

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1 care?

2 A Not that I remember.

3 Q Do you remember any experiences of going to the doctor?

4 A No.

5 Q Did there come a time when you moved in with your  
6 grandmother?

7 A Yeah, when my grandfather died.

8 Q Okay. How old were you then?

9 A Fourteen.

10 Q And who lived in the house then?

11 A My dad and my brother, my grandmother and myself.

12 Q How long did your brother end up staying in the house?

13 A About, about a year-and-a-half.

14 Q Okay. And why did he ultimately leave?

15 A There was one date that my dad was yelling at me and  
16 since I don't speak back to him, I was standing there. My  
17 brother decided to speak up for me and my dad hit my brother.  
18 My brother stood up and started to fight back and my dad  
19 kicked him. He went a couple feet in the air and landed on  
20 his hands and knees, and got up, and ran out the sliding door  
21 and never came back.

22 Q Okay. I'd like to turn attention to your senior year of  
23 high school.

24 How old were you that year?

25 A Sixteen.

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1 Q When would you have turned 17?

2 A June 30th, '97.

3 Q What happened in the spring of your senior year of high  
4 school?

5 A My grandmother died.

6 Q Okay. And when was that, do you remember?

7 A April '97.

8 Q What happened after your grandmother died?

9 A I remember my dad taking off for a while and then, he  
10 came back with a girlfriend of his that he said he met in  
11 Indiana while doing helicopter training for the military.

12 They came back and it was right around my graduation time.

13 Q Okay. What was your dad's girlfriend's name?

14 A I remember it as Gerri.

15 Q Okay. What happened at graduation?

16 A I remember my dad wasn't going to come and him and Gerri  
17 fighting. Gerri ended up making him come.

18 Q Go ahead. Sorry.

19 A We got to graduation and it was a really, really small  
20 graduation class, like maybe 60 kids. And, of course, my name  
21 Fuller, towards the front of it, but I remember before I even  
22 crossed the podium, my dad had walked out.

23 Q You may have said this already, but when was your  
24 graduation?

25 A May of '97.

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18

1 Q After your graduation, how long did you stay in Arizona?

2 A Just a couple months, two or three months, because we had  
3 to sell that house.

4 Q Okay. Why did you have to sell the house?

5 A It was in probate between my dad and uncle.

6 Q And did the house sell?

7 A Yes.

8 Q What happened after the house sold?

9 A We stayed in a hotel until we figured out where he wanted  
10 to go.

11 Q Who stayed in the hotel?

12 A Just my dad and myself.

13 Q Can you describe the hotel for me?

14 A It was one bed, little, cheap. Like a little, really  
15 cheap run-down-style hotel.

16 Q How long did you stay there?

17 A About a week that I remember.

18 Q When you arrived at the hotel, what was your  
19 understanding of how, what the sleeping arrangements were  
20 going to be?

21 A That we'd have to share the bed.

22 Q Prior to that week, had you ever shared a bed with your  
23 father?

24 A No.

25 Q What happened at the hotel?

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19

1 A My, my dad would turn on like, pornography videos in the  
2 evenings. And then it was one time where he actually, he said  
3 that it was, I was getting older and it was his duty as a dad  
4 to teach me.

5 Q Prior to going to that hotel, had you ever seen  
6 pornography before?

7 A No.

8 Q What else do you remember your father saying to you?

9 A That he wanted to, he said he wanted to teach me how, how  
10 men and how male parts work.

11 Q So, what happened next?

12 A He got, well. I was facing the other way because I  
13 didn't want to look at anything, but he got undressed from his  
14 waist down.

15 Q Were you on the bed at that point?

16 A Yes.

17 Q Okay. Had you ever seen your father naked before?

18 A No.

19 Q Okay. What happened next?

20 A Well, he came back to bed and he had like, this shoe  
21 string kind of thing, reminded me of a shoe string. And he  
22 started touching his penis and got just a little hard and then  
23 tied the string on him, and then continued touching himself  
24 until he was able to ejaculate.

25 Q Okay. When he initially was putting the string on his

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1 penis, did he say anything?

2 A Not that I remember.

3 Q How about at the very start?

4 A He was just, just, that this is how, how, he wanted to  
5 show me how things work.

6 Q Did he say -- where were you facing while this was  
7 happening?

8 A I was laying on my back kind of looking at him off and  
9 on.

10 Q Did he say anything to you about where you should look?

11 A He wanted me to be looking at him.

12 Q What happened once he ejaculated?

13 A He got up and cleaned himself off and came back to bed,  
14 but laid down in a different spot on the bed.

15 Q How many times did this happen while you were in Arizona?

16 A Just the once that I remember.

17 MR. SOLOWAY: I'm sorry, I didn't hear that.

18 THE WITNESS: Just once that I remember.

19 Q What about the pornography? Did this happen on any other  
20 nights?

21 A It was at least a couple other nights, but I can't tell  
22 you how many.

23 Q What did you say to your father when this happened?

24 A Nothing.

25 Q Why didn't you say anything?

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21

1 A Because I was afraid to.

2 Q What were you afraid of?

3 A All this time I learned to just be quiet, to keep from  
4 getting the abuse that everybody else I saw get.

5 Q Okay. What happened after the hotel in Arizona?

6 A We were started to head up to Boise, Idaho. We stopped  
7 in a hotel outside of Nellis Air Force base in Vegas. We got  
8 there kind of late, but then I remember him saying he had to  
9 go out for some work and he was in his uniform that he had  
10 made and I stayed behind in the hotel. Woke up the next  
11 morning to him telling us that we had to leave because he  
12 forgot his ID and that we needed to leave as quick as  
13 possible.

14 Q You said he had made a uniform.

15 Can you tell me more about that?

16 A Like, we would go into, I guess it's like military supply  
17 stores or surplus stores, just wherever he could go and buy  
18 patches and stuff. And he had like, designed like a general's  
19 outfit.

20 Q Do you remember when he did that?

21 A It was off and on for years.

22 Q Do you know how many uniforms he had?

23 A Just the one that I know of.

24 Q Did he stay overnight with you in the hotel that night?

25 A No, he was not there.

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22

1 Q Where did you go next?

2 A We went up to Boise, I don't remember if it was Boise or  
3 Napa. It's the same general area. And his girlfriend Gerri  
4 met us up there and we went into an apartment.

5 Q Okay. Can you describe that apartment, please?

6 A It was a, just a small, two-bedroom apartment.

7 Q And do you know approximately when this was?

8 A At late, late '97.

9 Q Okay. What do you remember from being in Idaho?

10 A I remember going to a Catholic mass for Christmas Eve  
11 because Gerri was very Catholic. So, that's why I can  
12 remember that date because I can remember being there for  
13 Christmas.

14 Q Had you ever been to mass before?

15 A No.

16 Q What was life -- what was the relationship between Gerri  
17 and your father like?

18 A It seemed pretty calm. I don't remember there being a  
19 lot of issues going on until after the military police,  
20 whoever they were, they came in and took my dad's uniforms and  
21 what I always considered to be fake IDs. And then after that,  
22 Gerri said that she couldn't take it anymore and she was going  
23 to leave.

24 Q Okay. So, let's just back up a little bit.

25 Was this raid on the house after Christmas?

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23

1 A That I can remember it being after Christmas.

2 Q Okay. And what exactly happened?

3 A I just remember sitting in the living room and them  
4 coming and knocking on the door and saying something about he  
5 tried to get on a military base again.

6 Q And what did your father do when they were in the house?

7 A He was just really angry and irate, screaming and yelling  
8 at them.

9 Q Do you remember some of the things he said?

10 A No.

11 Q After that, is that when Gerri left?

12 A Yeah.

13 Q How long and how long after that did you -- how long did  
14 you stay in Idaho?

15 A Not very long because I can remember driving in a U-Haul  
16 down through the mountains of Nevada as we headed towards  
17 California and there was still snow on the roads.

18 Q Why did you leave Idaho?

19 A That was when I learned that the doctors wouldn't sign  
20 the doctors' notes, saying that he was just out for drugs and  
21 he wasn't really that disabled.

22 Q Okay. Tell me --

23 MR. SOLOWAY: Objection to "I learned," Judge.

24 THE COURT: Well, it is a Fatico hearing. You can  
25 cross-examine on that.

N. Fuller - direct - Penza

24

1 Q How did you learn what had happened at the doctor?

2 A He told me.

3 Q So, what exactly did your father tell you, to the best of  
4 your recollection?

5 A Just that he hated the doctors, that nobody understood  
6 what he was dealing with and we didn't know what we were going  
7 to do.

8 Q Okay. And did the, what you just said about, did he say  
9 anything about what the doctors -- did he tell you anything  
10 about what the doctors said regarding filling out the form?

11 A Just that he wouldn't fill it out. He didn't think he  
12 was that disabled, that he could still work.

13 Q And what was your father's demeanor when he was telling  
14 you that am?

15 A He was really upset.

16 Q Okay. How long after that did you leave Idaho?

17 A It was pretty quick, I can't tell you the exact date, but  
18 it was pretty quick.

19 Q And where did you go?

20 A California, San Diego, Escondido.

21 Q Why did you go there?

22 A Because he had a friend named Doug down in San Diego.

23 Q Okay. What happened once you got to San Diego?

24 A Well, we weren't able to get an apartment at first, so we  
25 ended up staying in a hotel again.

N. Fuller - direct - Penza

25

1 Q Why couldn't you get an apartment?

2 A I was just a teenager, I don't -- but from my  
3 understanding, it was because of his credit.

4 Q Okay. Had there been problems with checks with your  
5 father?

6 A Yeah. It was again my understanding, because he was  
7 always spending money but yet we could never pay the bills.  
8 It seemed like part of the reason we were always skipping  
9 around was he was writing bad checks.

10 Q Did he ever tell you anything about those checks?

11 A Not directly.

12 Q You said you went to a hotel?

13 A Yes.

14 Q Okay. Can you describe that hotel for me?

15 A Okay, it was like the first one, one bedroom, cheap,  
16 little hotel.

17 Q How long did you stay in that hotel?

18 A From what I can remember, about a month.

19 Q And how old were you then?

20 A Seventeen.

21 Q How do you know?

22 A Because I said we drove down through the mountains and  
23 there was still snow on the roads, so that would have to have  
24 been March or April at the latest.

25 Q And when would you have turned 18?

N. Fuller - direct - Penza

26

1 A Not until the end of June.

2 Q Tell me what happened at the hotel.

3 A Well, he would watch more of the pornography videos. It  
4 wasn't daily, but he would have, watch them quite often and  
5 then there was another time much like the time in Arizona.

6 Q Okay. Tell me happened.

7 A He got himself undressed he, to put, took the blankets  
8 off the bed this time and got himself undressed from his waist  
9 down.

10 Q Was this one bed again, in this hotel?

11 A Yes.

12 Q Okay, I'm sorry.

13 A And again, had that string and told me that I needed to  
14 pay more attention this time, but it, it, it was pretty much  
15 the same thing like the first time. He did everything  
16 himself, only he got up and went to the bathroom before he  
17 actually ejaculated.

18 Q Did you watch him the whole time that time?

19 A Most of the time, but I tried to close my eyes.

20 Q Okay. What did he say while it was happening?

21 A He was getting angrier, like I needed to be paying  
22 attention.

23 Q Anything else that you remember him saying?

24 A Just that he was still trying to teach me.

25 Q Was there another incident?

N. Fuller - direct - Penza

27

1 A There was a couple more.

2 Q Okay. What about the next time?

3 A The next time it started off the same way only he made me  
4 sit cross-legged at his waist.

5 Q What were you wearing?

6 A I had my pajamas on, my pants and shirt-style pajamas.

7 Q Did he ask you to get undressed?

8 A He wanted me to, but I wouldn't.

9 Q Did you say no?

10 MR. SOLOWAY: I didn't hear the question. Or the  
11 answer.

12 THE COURT: She said: Did he ask you to get  
13 undressed?

14 And she said: He wanted me to, but I said no.

15 MR. SOLOWAY: Okay.

16 Q Did you use the words no?

17 A No, I didn't say anything. I just wouldn't do it.

18 Q And where is your father on the bed?

19 A He's laying down with his head on the pillow.

20 Q And he is undressed from the waist down?

21 A Yes.

22 Q And what happened then?

23 A He took my hand and helped me hold the shoe string to  
24 wrap it around his penis.

25 Q Did he say anything to you before doing that?

N. Fuller - direct - Penza

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1 A Not really.

2 Q How much contact did you actually have with his penis  
3 when you were touching him?

4 A Not a whole lot, just whatever it took to put the string  
5 around.

6 Q Did you touch it when you were putting the string on?

7 A Just, just like in passing.

8 Q What did you do?

9 How does he actually wanted string tied on to his  
10 penis?

11 A It's like, looped around towards the top with two loose  
12 ends so that you could pull each end to make it tighter or  
13 looser.

14 Q And would he want it moved tighter or looser while he was  
15 masturbating?

16 A He would play with it sometimes.

17 Q Did he ask you to play with it?

18 A That, that time, yes.

19 Q Okay. And then what happened?

20 A He wanted me to use my hand to touch, to touch his penis  
21 but I actually pulled away.

22 Q Did he say anything when you pulled away?

23 A I don't remember if he said anything. I know he wasn't  
24 happy.

25 Q What did he do to show that he wasn't happy?

N. Fuller - direct - Penza

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1 A He just, like, would just like, sigh and just get that  
2 face that I knew that he'd make when he was angry.

3 Q Did he ejaculate in front of you that time?

4 A No.

5 Q Okay. What did he do?

6 A He went to the restroom.

7 Q And what did he do when he came out?

8 A He just crawled back in bed and laid down and faced the  
9 other way.

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11 (Continued on following page.)

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N. Fuller - direct - Penza

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1 EXAMINATION CONTINUES

2 BY MS. PENZA:

3 Q Did you say anything to your father about what had  
4 happened?

5 A No.

6 Q Why not?

7 A Again, I was scared to.

8 Q Were there any additional incidents?

9 A Yeah, one more that I remember.

10 Q Okay. What happened that next time?

11 A Everything started off all the same, the only difference  
12 was I -- I didn't pull my hand away the second time when he  
13 had me start to touch it, his penis.

14 Q Okay, so walk us through what happened.

15 A Um, he had like the videos playing in the background just  
16 with very little sound. He took the covers off the bed and  
17 was, again, naked from his waist down. I was sitting at his  
18 waist.

19 Q How did you -- in both incidents how do you come to be  
20 sitting at his waist?

21 A He told me to sit like that, then I just -- so I just sat  
22 like that.

23 Q Sorry. Please continue.

24 A So then he helped me put the string on again and then  
25 instead of letting go of my hand and me pulling away, I ended

N. Fuller - direct - Penza

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1 up having to rub and stroke his penis until he got hard. And  
2 then he -- actually ejaculated in my hand that time.

3 Q What happened -- what did you do when that happened?

4 A I got up and went to the bathroom and washed my hand and  
5 I remember feeling sick.

6 Q Did your father say anything?

7 A No. When I came back out of the bathroom he had the  
8 covers on the bed and was facing away.

9 Q On other than those three incidents, do you remember any  
10 other incidents while you were there?

11 A No.

12 Q How often do you remember the pornography playing?

13 A I mean it wasn't nightly, but it was a few other times.

14 Q Why didn't you pull your hand away the third time the way  
15 you had previously?

16 A He -- I guess I just -- like the fear that, I mean I saw  
17 how angry he got the time before and like each time this  
18 happened that he just got angrier, so I was just afraid.

19 Q What were you afraid would happen?

20 A Mostly of the yelling because he hardly ever really hit  
21 me, but it was 'cause I was always quiet. So I figured if I  
22 did something he didn't want me to do, that since there was  
23 nobody else around for him to hit, that I would be it.

24 Q How long did you stay in that hotel with your father?

25 A About a month, from what I remember.

N. Fuller - direct - Penza

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1 Q What happened after that?

2 A Well, we ended up getting an apartment somehow. It was a  
3 two-bedroom apartment, and we spent a lot of time with his  
4 friend out at parties and doing astronomy stuff.

5 Q What was life like then once you moved out?

6 A It -- things changed. I remember he started buying  
7 things again, like I got a really nice camera because I love  
8 to take photos. I had a Sea World membership and we spent a  
9 lot of days at Sea World and like along the coast just taking  
10 pictures.

11 Q Were you allowed to go out by yourself?

12 A No.

13 Q So when you were at Sea World all those times, was your  
14 father with you?

15 A Yes.

16 Q How long did you stay in San Diego?

17 A Until May of '99.

18 Q Okay. Why, what happened in May '99?

19 A A few months earlier my mom's dad had got in contact with  
20 my dad's friend Doug to let me know that my mom had been given  
21 six months to live and that he really wanted me to be able to  
22 see my mom one last time, but before I could go my mom had  
23 another surgery and it got put off. But then when she got  
24 better, my grandfather went ahead and paid for a roundtrip  
25 plane ticket for me to go up and see my mom. And I just -- I

N. Fuller - direct - Penza

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1 remember being surprised that my dad would even let me go.

2 Q And did you go?

3 A Yeah. I don't remember who took me to the airport, but I  
4 went.

5 Q What happened when you got there?

6 A My mom, she was really handicapped after her last  
7 surgery, had a caregiver that stayed with her 24/7 and it's --  
8 where she lived it was a tiny tourist town with a lot of  
9 activities going on, so there was a lot to see and do. And we  
10 lived like maybe a five-minute walk to the beach, and I just  
11 remember thinking to myself that that was the most fun I'd had  
12 in my life. And my mom thought it was really weird that when  
13 I wanted to go to the beach that I asked if I could go to the  
14 beach. She thought it was weird that even though I was almost  
15 19, that I was still asking to do such a simple task.

16 Q Did you end up heading back to San Diego?

17 A No. A couple days before I was going to leave, my mom's  
18 caregiver looked at me and said that: You know you're 18, you  
19 don't have to go back; a thought that had never occurred to  
20 me. And -- and I was really scared 'cause I knew he would  
21 hate me and be angry, but at the same time I was away. So  
22 something just made me call and tell him that I wasn't coming  
23 back, and I never did.

24 Q And how did your father respond when you made that phone  
25 call?

N. Fuller - direct - Penza

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1 A He was really angry. That was the first time that he  
2 started calling me names. He called me an ungrateful bitch  
3 and said some other things that I don't remember. I just  
4 remember being called the name.

5 Q And then did you stay in Washington?

6 A Yes.

7 Q When you were in Washington, did you tell your mother  
8 what your father had done to you in the hotels?

9 A After -- after I decided to stay, my mom and her  
10 caregiver, because she was always there, I kinda told them  
11 just like really high level what had happened. Like I hadn't  
12 given them all the details that I gave today, just -- just  
13 that he had the videos and was doing weird things. And my mom  
14 had an attorney that she had used when my brother got sent to  
15 live with her and she had me talk to him.

16 Q Can you tell me about that conversation?

17 A I told the attorney basically the same thing. And that  
18 attorney told me that because I was 19 now and that it  
19 happened in California, that I would have to go back to  
20 California to file a complaint. And that it would probably be  
21 more he said/she said and just more stress on me, but that I  
22 had that option to do so if I wanted to.

23 Q So what did you decide to do?

24 A I just let it go. I never did anything.

25 Q Why not?

N. Fuller - direct - Penza

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1 A Because I was away and I just wanted to move on. I  
2 didn't want to have to talk about it and I didn't want to have  
3 to face him.

4 Q When did you next see your father?

5 A Today or, sorry --

6 Q I'm sorry. Going back once you moved to Washington, when  
7 did you next see him?

8 A He followed us up -- he followed me up there, just  
9 probably a few months later he followed me up there.

10 Q And where did he move?

11 A Into an apartment down -- just a couple doors down from  
12 us.

13 Q Would you speak to him?

14 A No.

15 Q What would he do, what were your interactions?

16 A He would, like, watch when we would come and go and he  
17 would try to talk to us. He kept trying to give me things  
18 back because, obviously, when I left, I left with what I could  
19 take on the airport -- in -- on a suitcase. And he kept  
20 trying to use that as a reason to talk to me, and I just would  
21 walk away.

22 Q Did you and your mother have any interactions with your  
23 father?

24 A He had bought a truck in my mom's name somehow or using  
25 my mom's information.

N. Fuller - direct - Penza

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1 Q How did you find that out?

2 A Because part of the issues my mom had was she couldn't  
3 read real well. She had really bad vision and I was her  
4 caregiver, so I would open her mail and read for her. And it  
5 was a note saying that they were trying to -- trying to locate  
6 the truck to pick it up. And my mom called and told them  
7 where the truck was because we knew it was just parked a  
8 couple doors down.

9 Q Had your mother purchased the truck?

10 A No.

11 Q And where was it parked?

12 A It was in front of his house, my dad's house.

13 Q Did there come a time when you became pregnant?

14 A Yes.

15 Q When was that?

16 A In about July 2000.

17 Q And how much older than you was the father?

18 A About 15 years.

19 Q And did your father find out that you were pregnant?

20 A Yeah. I had originally moved out of my mom's house  
21 because, even though I was much older, it was still like I was  
22 being a rebel teenager and I wouldn't listen to my mom and I  
23 moved in with that guy. But when I got pregnant, I waited as  
24 long as I could. So I was three months pregnant and I finally  
25 told them that I wouldn't get an abortion.

N. Fuller - direct - Penza

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1 Q Who are you telling that to?

2 A My daughter's dad.

3 Q Okay.

4 A And so he walked out, just instantly. And I remember  
5 calling my mom up and I moved right back in with my mom, which  
6 was right back to that apartment that was two doors down.

7 Q So did your father see you after that?

8 A Yeah. When I started to show, my dad, one of his  
9 comments to me was that he was gonna make sure that my bastard  
10 child didn't grow up to carry on the Fuller name.

11 Q Did he say anything else to you?

12 A He called me like a slut and a whore and --

13 Q After your father did that, what did you do?

14 A We -- we tried to get a Restraining Order. I don't -- I  
15 honestly can't remember if it went through or not or if it was  
16 even a temporary one, but I remember being told that they  
17 couldn't locate him to serve him.

18 Q And did you stay in the same apartment where you were  
19 living?

20 A My mom and I ended up moving.

21 Q And where did you move?

22 A Longview, Kelso, Washington.

23 Q After that, after being in Washington and after he said  
24 those things to you, when did you next see your father?

25 A Here, today.

N. Fuller - direct - Penza

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1 Q Ms. Fuller, can you tell me how you learned about this  
2 case?

3 A It was the end of March, first of April. My mom called  
4 me and said that she had got a letter in the mail that just  
5 seemed really odd and she actually didn't pay any attention to  
6 it. She thought it was a joke, like another one of my dad's  
7 crazy attempts to try to get ahold of us. But she eventually,  
8 I believe, got a phone call from the probation officer,  
9 Victoria.

10 Q Okay. And so then what did you do?

11 A I guess my mom must have told them to talk to me, and I  
12 remember getting a phone call from Victoria. And even I  
13 thought it was all fake and weird because I spent a couple  
14 days actually researching and looking her up because I don't  
15 trust people.

16 Q What did you find when you looked her up?

17 A I found her LinkedIn account and like all the titles and  
18 everything matched, and I just remember it was really weird.  
19 So I -- it seemed off the wall even for that, so I went ahead  
20 and called her.

21 Q And how long did you speak to her?

22 A It felt like a couple hours.

23 Q Have you spoken to other people since then?

24 A Yes.

25 Q And told them what happened to you?

N. Fuller - direct - Penza

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1 A Yes.

2 Q Has your memory changed at all since your first  
3 conversation with Victoria?

4 A Yes.

5 Q And how has that happened?

6 A It's just I remember more because I had it all blocked  
7 out for the longest time. Though each time I talk about it,  
8 like I just remember more or things are clearer.

9 Q You mentioned your father trying to contact you. From  
10 the last time you saw him in Washington, prior to Ms. Main  
11 contacting your family, what type of attempts did he make to  
12 contact you?

13 A Like Facebook. He would have these weird accounts that  
14 he would reach out to me on.

15 Q What type of weird accounts?

16 A They were always like female accounts, like female names.  
17 Like one was trying -- they were like, like I had twin sisters  
18 somewhere that I didn't know about. I don't remember what  
19 they said, I just remember he was -- it was -- he would send  
20 strange messages and I would get creeped out and I would  
21 delete my Facebook account. Like, I was always recreating  
22 accounts.

23 Q When you'd receive these contacts from these women who  
24 were people from accounts that were labeled as coming from  
25 women, did it say what country those women were located in?

N. Fuller - direct - Penza

40

1 A Most of them, no. But there was one, the very last one.  
2 It was like November of '14, 'cause it was right after I got  
3 divorced. And there was this one, I can't even begin to say  
4 the name, it was a crazy name. It said it was coming from the  
5 Ukraine. And the very first line was -- said, I see you went  
6 back to your maiden name, which really freaked me out because  
7 that told me that he'd been watching me all this time. And  
8 he -- like, it started off like some -- like it was a lady  
9 saying, One of our father's friends said I should reach out to  
10 you; and then it ended up with, But I know you'll just delete  
11 it.

12 But the way my Facebook account is set up, I have to  
13 either accept or decline a message if I don't have you as a  
14 friend; so I read it, but I never accepted it.

15 Q Other than your mom and her caregiver and this lawyer you  
16 spoke to prior to speaking to Ms. Main, had you told anyone  
17 else about the abuse you experienced as a child?

18 A Really high level, I told my best friend.

19 Q What did you tell her high level?

20 A More about the mental and physical abuse. Like I told  
21 her that he did some un -- unusual sex stuff, but I never said  
22 like what he did.

23 Q Prior to today, did you discuss your testimony with your  
24 mother?

25 A Just really high level.

N. Fuller - direct - Penza

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1 Q Okay. What did you talk about with your mother?

2 A Well, back in April, I think it was right after I had  
3 spoke with Amy for the interview, it was actually my mom's  
4 birthday, it was April 13th, and I was calling my mom to wish  
5 her a happy birthday because my mom and I, we don't speak a  
6 whole lot. I was calling to wish her a happy birthday and I  
7 hadn't mentioned the case or anything because it was her  
8 birthday and I didn't want to upset her, and then my mom asked  
9 me how it was going and I told her that I didn't want to talk  
10 about it because I didn't want to upset her. And she made a  
11 comment that it was actually one of the best days of her life  
12 to hear that I could possibly bury my dad.

13 Q And is that why you're testifying here today?

14 A No.

15 Q Why are you testifying here today?

16 A Because I don't want to see anybody else get hurt.

17 MS. PENZA: No further questions, Your Honor.

18 THE COURT: All right, cross-examination.

19 MR. SOLOWAY: Thank you.

20 Judge, is this podium affixed here or can I move it  
21 back a little bit?

22 THE COURT: No, it's not affixed, you can move it  
23 wherever you like.

24 MR. SOLOWAY: Thank you.

25 ///

N. Fuller - cross - Soloway

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1   CROSS-EXAMINATION

2   BY MR. SOLOWAY:

3   Q    Good afternoon, Ms. Fuller.

4   A    Good afternoon.

5   Q    My name is Robert Soloway. I am your father's lawyer.

6   Okay?

7   A    (Nodding.)

8   Q    And I am going to ask you a few questions. So if you  
9   don't understand a question I ask you, just please indicate  
10   that to me and I will do my best to rephrase it or speak more  
11   clearly or more loudly. Okay?

12   A    Okay.

13   Q    When you were testifying just a couple of minutes ago,  
14   one of the things that you said was that you spoke to both a  
15   girlfriend, a best friend, and to your mother at something you  
16   referred to as at a high level.

17           Right, do you remember saying that?

18   A    Yes.

19   Q    And when you say you spoke at a high level, do you mean  
20   by that that it wasn't a very specific conversation, is that  
21   what you mean or there wasn't a lot of detail?

22           Can you just explain to me what you mean by high  
23   level in that context; do you know what I mean? Do you know  
24   what my question is?

25   A    Yes. With my best friend when I say high level I just

1 mean she knew that I had a really bad childhood, but prior to  
2 being on the plane to come here today she knew nothing about  
3 the sexual part. She just knew that we moved a lot and that  
4 about the abuse and the yelling and screaming.

5 Q That is, she didn't know the details?

6 A Correct.

7 Q And when you spoke with your mother at a high level, you  
8 were indicating also that she didn't know certain details, or  
9 you meant something different when you used the word high  
10 level there?

11 A For my mom, as to the courts, as to being here, all my  
12 mom knows is that I've had interviews and that I'm here today  
13 to interview.

14 Q And when you said that you spoke to this girlfriend, is  
15 that a conversation that you had back in the time period when  
16 you were living with your father in the San Diego area in  
17 these hotels or that's a conversation you had with this  
18 girlfriend more recently?

19 A Much more recently. I've only known her ten years.

20 Q Okay. So the activities and things that you are  
21 testifying about involving the things you say your father did  
22 in your presence and made you do, those things occurred back  
23 in the 1990's, right?

24 A Yes.

25 Q You said that your grandmother, your father's mother,

N. Fuller - cross - Soloway

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1 died in April 1997, right?

2 A Yes.

3 Q And is it correct that your brother, Eric, was no longer  
4 living in the home with you and your father in April 1997 when  
5 your grandmother died?

6 A I don't remember. I thought it was afterwards.

7 Q You thought he was still there when --

8 A Yes --

9 Q -- your grandmother died?

10 A -- I thought he was still there or -- after my  
11 grandmother died, no, he was --

12 Q No, I'm sorry if I said that. When your grandmother  
13 died.

14 A When my grandmother died, my brother was already gone.

15 Q All right.

16 A Sorry.

17 Q So that is he had gone and went to move, I'm sorry, went  
18 to live with your mother in Washington, right?

19 A Yes.

20 Q He was basically taken away by something like Child  
21 Protective Services, right?

22 A Something like that. I don't know who, but yes, he was  
23 gone.

24 Q But in any event, he went and lived with your mother,  
25 right?

1 A Yes.

2 Q And is it fair to say that at the time when your brother  
3 went to live with your mother, that you were made aware or  
4 became aware that you, too, could go and live with your mother  
5 if you wanted at that time, that it was up to you?

6 A I was never given the option.

7 MR. SOLOWAY: Can I have a second here, Judge?

8 (Pause.)

9 BY MR. SOLOWAY:

10 Q Now, when you say that you never had the option, do you  
11 mean to say by that that your father didn't give you the  
12 option or your mother didn't give you the option or someone  
13 else didn't give you the option?

14 A As far as at the same time my brother left or --

15 Q Yes. When you learned and became aware that your brother  
16 had left to go live with his mother before your grandmother  
17 died, are you saying that you didn't have the option to do  
18 that because of your mother, your father or for some other  
19 reason?

20 A I -- I know I was never approached. Later my mom tell me  
21 that they asked her if she wanted to pursue taking me, and I  
22 was two months away from -- or two or three months away from  
23 graduation and my mom -- my grandmother was still alive and  
24 she thought that I would be going off to college and she  
25 didn't want to rip me out of the home.

1 Q Okay. Now, there came a time, Ms. Fuller, in 2017,  
2 sometime around April, where you had an interview, that is you  
3 were interviewed in a police station in Ohio by an agent or  
4 someone affiliated with the government regarding this case,  
5 right?

6 A Yes.

7 Q You remember that, right?

8 A Yes.

9 Q You sat with a woman who talked to you for a period of  
10 time and told you she wanted you to do your best to tell her  
11 the truth in response to the questions she was going to ask  
12 you, right?

13 A Yes.

14 Q And those were questions she asked you about your father,  
15 right?

16 A Yes.

17 Q And about growing up in your home and the things that you  
18 experienced, right?

19 A Yes.

20 Q And you told her that you would do your best to tell the  
21 truth, right?

22 A Yes.

23

24 (Continued on the following page.)

25

1 EXAMINATION CONTINUES

2 BY MR. SOLOWAY:

3 Q Now, one of the things, excuse me, that they asked you  
4 about was your relationship with your father -- your brother's  
5 relationship with your father, your mother's relationship with  
6 your father, things like that; right?

7 A Yes.

8 Q And there came a time that you talked about -- and if you  
9 don't remember you can say that -- your brother actually  
10 leaving Arizona and going to live with your mother up in  
11 Washington. Do you remember talking about that?

12 A I'm sure it came up. I don't remember what was said but  
13 I'm sure it came up.

14 Q You don't remember specifically as you sit here today but  
15 it wouldn't surprise you if that was one of the things you  
16 talked about in that interview; right?

17 A No, it wouldn't surprise me.

18 MR. SCHNEIDER: Your Honor, do you have a copy of  
19 that transcript with you the bench.

20 THE COURT: I do not think there was a transcript,  
21 if you recall --

22 MS. PENZA: Your Honor, it was provided as 3500 and  
23 F-2.

24 MR. SCHNEIDER: I don't have a copy for the court,  
25 but I'm going to ask Ms. Fuller --

1 MS. PENZA: We provided a copy, but we're happy to  
2 provide another one.

3 THE COURT: I have it right here.

4 BY MR. SOLOWAY:

5 Q I want to ask you, Ms. Fuller, when you indicate you did  
6 not have a choice, I want to ask you about some of the  
7 questions and answers that were put to you -- that is,  
8 questions that you were asked and answers that you gave in  
9 that interview.

10 Do you remember her name was Amy Allen, I think?

11 A Yes.

12 Q Right?

13 A Yes.

14 Q Do you remember that? And the way that the interview  
15 went is that you basically gave very long answers to kind of  
16 short questions. So, directing your attention -- I'm going to  
17 direct your attention to an answer that you gave to a question  
18 and this is on page 20 of the transcript just for the judge  
19 and the lawyers.

20 The question occurs way back on page 17. That's the  
21 last question before the answer in which you are asked at line  
22 420 -- I'm sorry, at line 419. Just you're telling a story  
23 and the question is, "Right, uh-huh," and then you continue.  
24 You're talking about your life and your life with your parents  
25 and you begin saying, I remember my parents would -- at that

1 point I was living with my grandparents, my dad's parents.

2 Okay.

3 And then you continue narrating the story of your  
4 life for several pages. And then at page 20, I want to ask  
5 you if you remember giving this answer to the question that I  
6 went back to a couple of seconds ago and the answer reads:

7 "And my brother actually went up to Washington state  
8 to live with my mom and my mom -- they were asking if they  
9 should take me, but my mom left it up to me and everything and  
10 at this point we said no because I was, like, three months  
11 away from graduating college -- high school and was supposed  
12 to go to college."

13 And then it goes on and you talk about you being  
14 underage and how you ended up not going to college. But do  
15 you remember giving that answer to, again, that question that  
16 happened pages and pages earlier, and if you want I will show  
17 it to you. Do you remember giving that answer in which you  
18 indicated that your mom left it up to you as to whether you  
19 wanted to go and live with her in Washington like your brother  
20 did?

21 A I can't tell you word for word what I said. I know we  
22 talked about the subject but like everything else when I first  
23 started interviewing with Amy, my memories of everything  
24 weren't nearly as clear.

25 Q Okay. And I just want to be clear. I'm not asking you

1 to give, like, a recital that would be word for word. You  
2 know, we're really talking here about the sum and substance of  
3 what you were communicating. Okay?

4 So right now here in court you are saying that you  
5 didn't have a choice at this time in your life when your  
6 brother left in -- some time before April 1997.

7 Now, in April of 1997, you were 16 years old; right?

8 A Yes.

9 Q Because you were going to turn 17 this June of 1997,  
10 right?

11 A Yes.

12 Q So as of April you were 16 years old, and you said that  
13 you had no choice, but, again, do you remember not exactly  
14 word for word but in -- sort of in substance the sense of what  
15 you were saying, telling Ms. Alan in that interview that my  
16 brother actually went to Washington state to live with my mom  
17 and my mom -- they were asking if they should take me and my  
18 mom left it up to me and everything and at this point we said  
19 no because I was, like, three months away from graduating high  
20 school, do you remember giving that answer that has -- whether  
21 it's word for word or not, a very clear meaning?

22 A I mean, it all matches, but I do not remember ever being  
23 asked. I remember my mom telling me after I went up to live  
24 with her.

25 Q You remember your mom asked after you went up to live

1 with her what?

2 A She -- she -- she told me after I went up to live with  
3 her that they had given her the option to fight for me and she  
4 chose not to.

5 Q That's what your mom told you?

6 A Yes, after I went through everything.

7 Q And she was referring to this time around when your  
8 brother came to live with her?

9 A Yes.

10 Q Now here, Ms. Fuller, you have said that it sounds like  
11 what happened in California in those hotel rooms and I have to  
12 ask you about some of the things you say your father did.

13 You indicated that I think you said on your  
14 testimony that your father actually had you touch him in this  
15 California hotel two of the times where this occurred where  
16 these pornos were playing and you were in, it sounds like, a  
17 standard hotel room with one king sized bed. Am I correct or  
18 did I get that wrong?

19 A That's correct.

20 Q And you said that at the time in Arizona before you came  
21 to California that he did this thing with a string one time,  
22 and you stayed in a room something like three nights; is that  
23 correct?

24 A Yes.

25 Q And you said that he played porno movies more than two

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1 times when you were in California, right?

2 A Yes.

3 Q But the touching only occurred two times?

4 A Yes.

5 Q Your touching?

6 A Yes.

7 Q I'm sorry; right?

8 A Right, I only touched once.

9 Q Right, okay. Now, one of the things that you mentioned  
10 is that your father, you said, followed you to you Washington  
11 after you advised him that you weren't going to return to live  
12 with him; right?

13 A Yes.

14 Q And that when there -- when your child was born, your  
15 father said to you something like, I'm not going to have  
16 this -- this child, bastard child, carrying on my name,  
17 something like that?

18 A Yes, while I was pregnant.

19 Q That was while you was pregnant that he did that?

20 A Yes.

21 Q And you said that you took some kind of action to have or  
22 try to have your father be required to stay away from you  
23 because of these words that he said to you about the baby or  
24 the coming baby; right?

25 A Yes.

1 Q And prior to -- now, you said that what you did was that  
2 you got some kind of -- did you get some kind of order?

3 A I don't remember if it ever actually ever got officially  
4 made -- I know they approved it, but I also remember being  
5 told that they couldn't locate him to serve him.

6 Q Well, didn't you, again in this interview that you gave  
7 to Amy Allen back in the Ohio police station, claim that you  
8 reported to the Long Beach Police Department in the state of  
9 Washington that your father had somehow threatened you or  
10 threatened the life of the baby and that you went to that  
11 police department and got a restraining order?

12 A Yes, that -- we did. I just don't remember if it was  
13 ever actually issued.

14 Q And -- now, I want to just ask you again about what --  
15 okay, I'm just going to direct your attention to -- I'm going  
16 to ask you to listen to some questions and answers that you  
17 gave back in April at the police station to Amy Allen and so  
18 you can think about them for a second.

19 Starting on page 53, line 1323. I'm just going to  
20 read you some questions and answers from that interview in  
21 Ohio; okay?

22 A Okay.

23 Q "Question: Were he and your mom ever" -- something is  
24 unintelligible.

25 "Answer: No. When they got divorced for good I was

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1 12 and they never spoke again.

2 "Question: And so" --

3 MS. PENZA: Objection, Your Honor. The line is  
4 indiscernible. So we don't know what that sentence says.

5 MR. SOLOWAY: What did I say?

6 THE COURT: You left out the word "indiscernible."

7 MS. PENZA: It sounds like the end of the sentence  
8 and we don't know what the meaning of that sentence is.

9 MR. SOLOWAY: I have no problem with that.

10 BY MR. SOLOWAY:

11 Q "Question: And, so, when he's living two doors down it  
12 never --

13 "Answer: Yeah. It wasn't good" --

14 MR. SOLOWAY: I'm sorry, I'm sorry. I'm reading in  
15 the wrong place. I want to start at line 13 02. I apologize,  
16 Judge.

17 THE COURT: Where are you?

18 MR. SOLOWAY: I'm at page 53, line 1302.

19 THE COURT: Okay.

20 Q "Question" --

21 THE COURT: I want to tell the witness that at some  
22 time when the recording of this interview was made, the  
23 recording could not pick up certain things that you or the  
24 questioner said. When that happened, it shows up in the  
25 transcript as "indiscernible."

1           So when Mr. Soloway is asking you these questions,  
2 if he says "indiscernible" that means something was left out  
3 of the question or answer because it was not clear from the  
4 recording.

5           Do you understand?

6           THE WITNESS: Yes.

7           THE COURT: Go ahead.

8 BY MR. SOLOWAY:

9 Q        Question at line 1302, page 53:

10           "Question: And then you said he threatened  
11 because" -- and something was indiscernible so that means it  
12 couldn't be made out by the person transcribing this.

13           "And then you said you threatened because --"  
14 indiscernible, "about her name?

15           "Answer: Well, because her dad left me when I was  
16 pregnant -- when I wanted an abortion, he left. So when she  
17 was born and my dad was living down the -- two doors down,  
18 we'd been trying to get him -- we'd been trying to get him to  
19 live us alone and he wouldn't. And then because I left him,"  
20 something is indiscernible, "these bad things against me, he  
21 just -- I remember him saying, I don't want that bastard baby  
22 to carry on our name. So --"

23           "Question: And then what police department did you  
24 report that to?

25           "Answer: It would have been the Long Beach Police

1 Department."

2 Do you remember giving those answers to those  
3 questions when Amy Allen was interviewing you?

4 A I remember answering them.

5 Q Okay. And when you were answering them, were you doing  
6 your best to remember as best you could and tell the truth as  
7 best you could?

8 A Yes, of course.

9 Q Okay. And so is it correct that you reported this  
10 conduct of your father to the Long Beach Police Department?

11 A That's what I remember.

12 Q Okay. So, now, did you obtain some kind of order when  
13 you made this report to the Long Beach Police Department that  
14 referred to your father not being able to come around you or  
15 being limited in the way he could make contact with you?

16 A I know we tried to get one. I can't remember if it ever  
17 actually got served.

18 Q Okay. Well, turn to another section of this transcript  
19 at page 58, line 1447. I'm going to ask you whether you  
20 remember these questions and answers:

21 "Question: And that little town that you reported  
22 those restraining orders to in Washington state, again is  
23 Lake --

24 "Answer: Long Beach.

25 "Question: Long Beach. Okay.

1                   "Answer: Yeah, Longview is the bigger city. Long  
2 Beach. It should be Long Beach.

3                   "Question: They never gave you one on dad just,  
4 like, following you around but gave you one on the --"  
5 indiscernible "-- with the baby?

6                   "Answer: Yeah. When -- yeah, I guess that was  
7 enough to finally get them to do it.

8                   "Question: Got it."

9                   That's the questioner saying, "Got it."

10                  "Answer: It was only good for a year. I'm not sure  
11 if it was -- it might have mentioned a temporary one,  
12 honestly, I don't know, because it was just so long ago. I  
13 remember it was just good for a year and then when they went  
14 to try to serve him again they couldn't find him and there was  
15 no --" and then it's indiscernible.

16                  Do you remember giving those answers to those  
17 questions?

18 A                I remember answering the questions.

19 Q                So, Ms. Fuller, weren't you indicating in those answers  
20 that it was good for a year and when they tried to serve him  
21 the second time after that first year, that's when they  
22 couldn't find him to serve him? Was that the meaning of what  
23 you were trying to communicate there?

24 A                At that time, yes.

25 Q                Okay. And are you aware -- well, do you have a copy of

1 that order that you say you obtained?

2 A No.

3 Q No. Was it something that maybe the prosecutor or  
4 probation officer or Amy Allen ever asked you if you could  
5 find or dig up or locate somehow?

6 A No.

7 Q Did anybody ever ask you to look for it?

8 A No.

9 Q Do you ever remember actually having it in your hand at  
10 any time in your possession?

11 A No.

12 Q You but you say that -- your best recollection is that it  
13 was good for a year?

14 A When we talked to the police department, I was told  
15 that's what it would be but as far as it being -- them being  
16 able to locate him to serve him, I can't remember if it was  
17 for that one or for it to be -- when it was renewed.

18 Q Okay. And when you made this complaint or this report,  
19 did you actually physically go to the police station to do  
20 that?

21 A Yes.

22 Q And did you go personally to the police station by  
23 yourself or with anybody?

24 A My mom would have been with me.

25 Q Do you remember specifically your mom going with you?

1 A Not specifically, but my mom and I were always together  
2 because of her health.

3 Q So it was the kind of thing that she definitely would  
4 have gone with you to do?

5 A More than likely.

6 Q So, your mom. And what about when your dad made this  
7 threat to you that you claim he made or referred to this baby,  
8 this coming baby, was anybody present when he said that to  
9 you?

10 A Not that I remember.

11 Q Okay. And the baby was born in 2000 or 2001?

12 A 2001.

13 Q And are you aware in any way that there's no record that  
14 anybody -- there's no copy of that restraining -- have you  
15 seen a copy of that restraining order ever in your life?

16 A Not that I remember.

17 Q Are you in any way aware that there's not a single report  
18 among the Long Beach Police Department official records of you  
19 making this complaint that you say resulted in this  
20 restraining order? There's not one police report that reflect  
21 you or your mother or anybody else coming in and making this  
22 particular complaint against your father; do you know that  
23 there's no such report or no?

24 A No.

25 Q I mean, there are -- you've had contact with the Long

1 Beach Police Department during the time that you lived there  
2 that had nothing to do with your father at times; right?

3 A Not that I remember.

4 Q Well, did you have some troubles with Chris Gibson during  
5 some periods of time in your life that you involved the police  
6 if?

7 A That's my daughter's dad and the only thing that was  
8 ever -- I remember is just when the state issued child  
9 support.

10 Q How about when you and your mother complained to the Long  
11 Beach Police Department that Chris Gibson had stolen from you  
12 a Coleman lantern, wouldn't provide you with a cradle that was  
13 yours that you wanted to use for the baby? Do you remember  
14 making complaints that Chris Gibson stole a sleeping bag from  
15 you? So we're talking about a sleeping bag, a Coleman lamp  
16 and a cradle.

17 Do you remember making complaints to the police that  
18 he had those things, he wouldn't give them to you and you  
19 wanted them back?

20 A No, I don't remember that at all.

21 Q Okay.

22 MR. SOLOWAY: I'm going to ask us have reports that  
23 were supplied by the government marked. Should I give them to  
24 the reporter or shall we deem them marked and give them to the  
25 witness?

1                   THE COURT: You can put a sticker on them and then  
2 they are marked. Then you can show them to the witness.

3                   Should we take a break for lunch and then you can  
4 put stickers on them during lunch?

5                   MR. SOLOWAY: That would be fine, Judge. I didn't  
6 pre-mark things so, yes.

7                   THE COURT: Okay. Let's break until 1:45. See you  
8 back then.

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10                   (Continued on following page.)

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## AFTERNOON SESSION:

(In open court.)

(Judge BRIAN M. COGAN enters the courtroom.)

THE COURTROOM DEPUTY: All rise.

THE COURT: Be seated, please.

Let's have the witness back.

(Defendant enters the courtroom.)

(Witness resumes stand.)

THE COURT: Mr. Soloway, you may continue.

## 10 CROSS-EXAMINATION

11 BY MR. SOLOWAY:

12 Q Good afternoon, Ms. Fuller.

13 So, when we broke I was asking you about some  
14 contacts that I -- suggesting that you had with the Long Beach  
15 Police Department in connection with the father of your child.

## 16 Do you remember that?

17 A Yes.

18 Q Yes. And I was asking you that, in connection with your  
19 statement, that you went to the Long Beach Police Department  
20 and you got a restraining order against your father, right?

21 A Yes.

22 Q And are you saying now that you are not sure that you got  
23 a restraining order against your father at the Long Beach  
24 Police Department? Just so I'm clear.

25 A I know I tried to get one and, but I was told that they

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1 couldn't serve him because they couldn't locate him.

2 Q And were you told that immediately when you first got the  
3 restraining order or a year later?

4 A I don't remember.

5 Q Okay. So, I was just asking you about whether you had  
6 had contacts with that police department and you were familiar  
7 with them and they were familiar with you.

8 And would you say that's the case; is that there  
9 were times when you had contact with the Police Department of  
10 Long Beach that had nothing to do with your father?

11 A Not that I remember.

12 Q Okay.

13 MR. SOLOWAY: I have what is marked here Defense  
14 Exhibit 1, Your Honor. I'd like to show it to the witness, if  
15 I could.

16 I will show it to the Government. And I will show  
17 two at the same time, if I could, just to move it along here.

18 THE COURT: Okay.

19 MS. PENZA: No objection.

20 MR. SOLOWAY: Can I approach the witness?

21 THE COURT: You may.

22 MR. SOLOWAY: These two pieces of paper, ma'am, have  
23 been marked. I'm just going to ask you to take a moment and  
24 read them, if you would, and just let me know when you are  
25 finished.

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1 (Pause in the proceedings.)

2 A Okay.

3 Q You read them both?

4 A Yes.

5 Q Have you ever seen that kind of document before?

6 A No.

7 Q Okay. But were you able to read the description section  
8 of the document and understand what it said?

9 A Yes.

10 Q Okay. And you said that you didn't remember having  
11 interaction the with the police department in connection with  
12 the father of your child, Mr. Gibson.

13 Does that happen to refresh your recollection that  
14 you did have contacts with the police department?

15 A No.

16 Q It doesn't refresh your recollection?

17 A No.

18 Q Okay. Did you have a situation with Chris Gibson in  
19 which you, he moved out of -- well. Let me back up for a  
20 second.

21 There was a time when you and Chris Gibson in 2000  
22 lived together somewhere in this area of Long Beach?

23 A Yes.

24 Q And I think you said on direct there came a time that you  
25 and him broke up over a matter relating to your pregnancy and

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1 you moved back in with your mother, right?

2 A Yes.

3 Q And was there a time when you had a problem because  
4 Mr. Gibson removed some things that didn't belong to him, but  
5 rather belonged to you; specifically, a sleeping bag and a  
6 Coleman stove?

7 A Not that I remember.

8 Q Okay. And again, this document does not refresh your  
9 recollection about that?

10 A No.

11 Q And that's the same we can say about any contact you  
12 might have had with respect to a baby cradle that was in a  
13 storage shed that you wanted back from Chris Gibson.

14 You don't have any recollection of that?

15 A No.

16 MR. SOLOWAY: I'm going to just take those back from  
17 you if I could. Thank you.

18 Q When you were living up there in Long Beach, was your  
19 brother Eric also living there?

20 A No.

21 Q Okay. Did you ever see Eric during any of the period of  
22 time that you were living up in Long Beach?

23 A I don't remember.

24 Q Okay. One of the things you said that happened when you  
25 went up to Washington to live with your mother is that there

1 came a time that you opened up to your mom and told her what  
2 your father made you do to him, right?

3 A Just, just very basic.

4 Q High-level?

5 A Yes.

6 Q Right, okay.

7 And now you're saying that what happened at that  
8 point when you made this communication to her at this  
9 high level, was that you and her went and sought the advice of  
10 a lawyer; is that right?

11 A Yes.

12 Q And that's your recollection now?

13 A That's my recollection.

14 Q And that wasn't your recollection when you were  
15 interviewed by Amy Allen; correct?

16 A No.

17 Q And have you had an opportunity to review the transcript  
18 of your interview with Amy Allen?

19 A No.

20 Q Okay. Have you had an opportunity to talk to the  
21 Assistant United States Attorney or to anybody in the  
22 Government -- I don't mean to point, but I am referring to  
23 Ms. Penza -- about some of the contents of that interview with  
24 Amy Allen?

25 A We spoke briefly.

1 Q You spoke briefly about some of the contents, some of the  
2 things that you were asked that you said to Ms. Allen?

3 A Yes.

4 Q And was one of the things that you talked about with the  
5 prosecutor or with anybody from the Government the fact that  
6 you told Amy Allen very clearly that when you opened up, when  
7 you told your mother about what your father did, what you  
8 claim your father did to you, that she took you to the police  
9 department to make a police complaint.

10 Are you aware that that's what you told Amy Allen?

11 A Yes.

12 Q And did you have conversations with anyone in the  
13 Government about that before coming here to testify today?

14 A I honestly don't remember. We talked about some stuff.

15 Q Because you're now saying that just didn't happen. The  
16 interview was in April 2017, just a few months ago, five  
17 months ago. And now what you're saying is you didn't go to  
18 the police but rather that you went to a lawyer, right?

19 A Yes.

20 Q Okay.

21 A I mean, I've had to relive this several times over. As I  
22 spoke to people, my memory becomes clearer.

23 Q Yes. And again, just so I do not have to read the  
24 transcript, we can agree that you told Amy Allen in your  
25 interview where she asked you to do your best to tell the

1 truth, that when you told your mom, she took you to the  
2 Long Beach Police Station.

3 That's what you said at that time in April, right?

4 A At that time.

5 Q Yes. And have you been made aware that there are no  
6 police reports of the kind that I just showed you, like  
7 Long Beach Police Department forms, containing complaints that  
8 people made to the police?

9 Have you been made aware that there are no police  
10 reports about you ever saying that your father made you do  
11 these sort of sexual things to you?

12 A I'm not aware, but like I said, I know now that I spoke  
13 to the attorney instead.

14 Q I see. Okay.

15 Now, do you know that when you were living up in  
16 Washington with your mother, you say you didn't see your  
17 brother, but were you aware that he was actually living in  
18 that community as well and also living with your father for a  
19 period of time?

20 A I did not know he was living with my father, but I knew  
21 he was in the area.

22 Q Okay. Now, you are saying that the things that you told  
23 your mother were what you've described as being on a high  
24 level but would you say, Ms. Fuller, that included in what you  
25 told her was something about your father making you do

1 something with, you know, a shoe string on him?

2 A I mentioned to my mother that he had a shoe string that  
3 he liked to use. I never mentioned to her that I had to use  
4 it. I just said that he had a string he liked to use.

5 Q And in other words, you are saying that you didn't tell  
6 your mother that you actually had to do something with that  
7 shoe string in connection with his body?

8 A Not to my mother.

9 Q You never told your mother that.

10 Did there come a time that you became -- so, you  
11 didn't tell your mother; you mentioned a shoe string but you  
12 never mentioned to your mother that you were actually  
13 instructed or made to do something with that shoe string by  
14 your father on him; correct?

15 A Right.

16 Q Okay. And did you ever tell your mother that you were  
17 forced to perform fellatio on him? Did you ever tell your  
18 mother that?

19 Do you know what fellatio is?

20 A No, sir.

21 Q Okay. I think the common street term for it is a  
22 blow-job, like your mouth.

23 Have you heard that term?

24 A Yes.

25 Q Okay, I'm sorry.

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1           So, did you ever tell your mother that you were  
2 forced to do that to him?

3 A    No.

4 Q    Did you ever become aware that your mother had informed  
5 the United States Probation Department that the sexual kind of  
6 thing that he forced you to do was that, what I just said?

7 A    No.

8 Q    You are not aware that that's what your mother told  
9 Victoria that you told her your father made you do?

10 A   No.

11 Q    Okay. Now, when you were in California in this hotel,  
12 during that period of time, are you sure that you were 17 when  
13 this activity was going on?

14 A    I'm not absolutely positive, but by the dates, I would  
15 have -- I have to have been.

16 Q    Well, did you have a conversation at some point in  
17 August with Amy Allen, like a telephone conversation, in which  
18 you said to her that during the incident in San Diego you  
19 would have been age 17 to 18 years old, just sort of  
20 suggesting that you weren't really sure.

21 A    I know it was late 17.

22 Q    Okay. So, did you tell Amy Allen -- now you know that  
23 you would have been 17, but when you spoke to Amy Allen on  
24 August 1st -- by the way, do you remember speaking to Amy  
25 Allen sometime about a month and a few days ago, August 1st,

1 2017, about the sort of the timing of things and telling her  
2 that the second incident of abuse, not the Arizona one but the  
3 San Diego one, you would have been aged 17 to 18 years old?

4 A I remember speaking to Amy several times, but I can't  
5 tell you when or exactly what was said each time.

6 Q And when you went to your mother's in Washington, it was  
7 well into you being more than 18 years old at that time,  
8 right?

9 A Yes.

10 Q It was in like May of '99 that you went to your mom's?

11 A Yes.

12 Q Right. And in May of '99, you were 19-going-to-be-20 in  
13 one month, right?

14 A No.

15 Q I'm sorry, you were 18, and going to be -- forgive me.

16 In June of '99 you would be 19?

17 A Yes.

18 Q In May of '99, obviously, you were 18 and that's when you  
19 went to your mother and didn't return, right?

20 A Yes.

21 Q Okay. So, you were with your father continuously in  
22 California through the period in 1999 up until May when you  
23 left to go to your mother?

24 A Yes.

25 Q Okay. And so, for a chunk of that time, from June 30th,

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1 1998 forward, you were 18 throughout that period of time with  
2 your father in California, right?

3 A Yes.

4 Q Okay.

5 MR. SOLOWAY: I have no further questions for the  
6 witness, Judge, but there is a document I would like to put  
7 in, in the hearing, before we close or before I rest.

8 THE COURT: Sure. Do you want to do that now?

9 MR. SOLOWAY: Yes.

10 THE COURT: Why don't we get the witness off the  
11 stand.

12 Is there any redirect?

13 MR. SOLOWAY: Oh, yes.

14 MS. PENZA: May I have one second, Your Honor?

15 (Pause in the proceedings.)

16 MS. PENZA: Just briefly, Your Honor, may I inquire?

17 THE COURT: Yes.

18 REDIRECT EXAMINATION

19 BY MS. PENZA:

20 Q Hello, Ms. Fuller.

21 I just wanted to go back to when you were in Idaho  
22 with your father and Gerri, okay?

23 A Okay.

24 Q When you attended the Christmas Eve mass, what year was  
25 that and how old were you?

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1 A '97 and I was 17.

2 Q And how long after that did Gerri leave your father?

3 A Within a couple months.

4 Q Okay.

5 Can you tell me about the, did Gerri tell you that  
6 she was leaving?

7 A Yes.

8 Q Can you tell me about that conversation?

9 A I don't know where my father was, but Gerri and I were  
10 standing in the living room and she told me that she was  
11 sorry, but she just couldn't take it anymore and that she was  
12 going back home, and she wanted to take me with her, she  
13 wished she could take me with her, but that I was 17 and my  
14 dad would file kidnapping charges, and she just couldn't deal  
15 with that. So, she had no choice but to leave me behind.

16 Q And what were your emotions during that conversation,  
17 yours and hers?

18 A We were both crying.

19 Q And how long after that did you move with your father to  
20 San Diego?

21 A Within a month or two.

22 Q Is your memory clear today about what happened in the  
23 hotel room in Arizona?

24 A Yes.

25 Q And is your memory clear today about what happened in the

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1 hotel room in San Diego?

2 A Yes.

3 MS. PENZA: No further questions, Your Honor.

4 THE COURT: Okay.

5 You may step down, thank you.

6 (Witness excused.)

7 THE COURT: Mr. Soloway, do you want to do that  
8 document now or would you like to wait?

9 MR. SOLOWAY: No, I would like do that now, Judge.

10 THE COURT: Okay.

11 MR. SOLOWAY: Do you have an objection to this  
12 document?

13 MS. PENZA: Your Honor, we have no objection.

14 The Government would ask that all the documents that  
15 have been appended to the Government's letters, which include  
16 this document, be admitted for the purposes of the Fatico.

17 THE COURT: I kind of assumed that.

18 MR. SOLOWAY: I don't have any objection to that.

19 THE COURT: So, the documents that have been  
20 submitted are included in the record.

21 So, the next question is, having made that  
22 observation that everything is admitted that has been  
23 submitted, does the Government have anything more on the  
24 medical issue -- well, first of all, on this issue that we  
25 just heard about.

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1 MS. PENZA: Your Honor, I have, I'm sorry I don't  
2 have Exhibit stickers with me, there are a few items that I  
3 would like to add to the record.

4 THE COURT: Ms. Clarke will hand you Exhibit  
5 stickers.

6 MS. PENZA: Thank you very much.

7 Your Honor, I would like to admit for the record a  
8 copy of the front page of the Santa Cruz High School year book  
9 from 1996 through 1997, which includes a picture of Nanette  
10 Fuller. If called to do so, Special Agent Mullen would be  
11 able to testify that he spoke to someone at the Sheriff's  
12 office in Arizona, and that they had attended high school with  
13 Ms. Fuller, and that this was a copy of the year book showing  
14 that she had graduated in 1997.

15 THE COURT: Okay.

16 MS. PENZA: That is Government's Exhibit 1.

17 (Government's Exhibit 1 received in evidence.)

18 MS. PENZA: I'd like to put in as Government's  
19 Exhibit 2, this is a copy of the, the Government has already  
20 submitted sanitized versions of e-mails. This is a copy of  
21 the pornographic images that were attached to some of the  
22 e-mails.

23 THE COURT: Hang on because now you are going  
24 further than I wanted to go at this point.

25 MS. PENZA: I'm sorry, Your Honor.

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1                   THE COURT: At the moment, I just wanted to go to  
2 the incident with the daughter.

3                   Is there anything else on that?

4                   MS. PENZA: No, I think just the year book.

5                   THE COURT: Okay.

6                   Is there anything else on the malingering issue?

7                   MS. PENZA: No, Your Honor.

8                   THE COURT: Okay.

9                   So now, tell me; let's go down the open facts and  
10 make sure we are on the same page as to what you are  
11 addressing by these various submissions because having them in  
12 the record and not knowing what they are supposed to say does  
13 not do me much good.

14                   So let me give you my list first, and this is based  
15 on Mr. Schneider's letter when he pointed out a number of  
16 things in the PSR that the defendant denies.

17                   First, is paragraph 3 of the PSR, which references  
18 e-mails from the NCMEC.

19                   Is that what you are about to mark?

20                   MS. PENZA: Yes, Your Honor.

21                   THE COURT: Okay. Well, then we are going to order.

22                   MS. PENZA: So, I will mark as Government's  
23 Exhibit 2 a copy of the e-mails, as well as the attachments.  
24 Some of the attachments, the full pages have been cut off and  
25 therefore, some of the portions, including the genitalia of

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1 some of the subjects, is not included in the portions, but  
2 there are smaller...

3 THE COURT: Thumbnails.

4 MS. PENZA: Thumbnails, I'm sorry, Your Honor, that  
5 do show the entire body.

6 I've also included in the same binder some of the  
7 other child pornography that was found on the defendant's  
8 computer, including some of the more violent images.

9 THE COURT: Okay.

10 (Government's Exhibit 2 received in evidence.)

11 THE COURT: Are any other Exhibits you have  
12 addressed to this dispute over paragraph 3 of the PSR?

13 MS. PENZA: No, Your Honor.

14 THE COURT: Okay.

15 Then let's go to paragraphs 4 and 5.

16 I am not sure I understand the defendant's denial of  
17 those paragraphs. I guess I should ask you, Mr. Soloway,  
18 what, if anything, is the defendant continuing to dispute in  
19 paragraphs 4 and 5?

20

21 (Continued on following page.)

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1 (Continuing)

2 MR. SOLOWAY: Judge, I think the nature of the  
3 objection arises from Mr. Fuller's belief that he's  
4 characterized here as, basically, a homeless person or a  
5 person without -- and that's specifically what the objection  
6 is.

7 In terms of --

8 THE COURT: Well, I am not going --

9 MR. SOLOWAY: -- him identifying the fact that he  
10 did accurately describe his residence history after being  
11 stopped at JFK, so what exactly -- I'm sorry, Judge, maybe I  
12 should address what you are --

13 THE COURT: I just know that this was one of the  
14 items in Mr. Schneider's letter in which he said the defendant  
15 does not agree --

16 MR. SOLOWAY: Right.

17 THE COURT: -- with paragraphs 4 and 5.

18 MR. SOLOWAY: And he doesn't.

19 THE COURT: So I am just asking why.

20 MR. SOLOWAY: I think I'm trying. Because  
21 Mr. Fuller regards the paragraphs as reflecting that he is --

22 THE DEFENDANT: Homeless.

23 MR. SOLOWAY: Yes, I think is basically homeless,  
24 whereas that's not correct.

25 THE COURT: Well, I do not think the Government is

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1 asking me to draw an inference that he is homeless.

2 Is the Government asking me to draw that inference?

3 MS. PENZA: No, Your Honor.

4 THE COURT: I have no interest in drawing that  
5 inference.

6 Is there anything in paragraphs 4 and 5 that is  
7 wrong?

8 MR. SOLOWAY: I would say no, Judge. The fact that,  
9 I guess, it's perceived that way by the defendant, by  
10 Mr. Fuller in some way doesn't give rise to an argument that  
11 there is factual -- that there is factual errors there.

12 THE COURT: Okay.

13 THE DEFENDANT: Your Honor, it says I resided in  
14 various hotels. That's untrue.

15 THE COURT: Okay.

16 Well, does the Government want to prove that he has  
17 resided in various hotels, at least that is what he told the  
18 agent at JFK?

19 MS. PENZA: Yes, Your Honor, we are happy to do so.  
20 If you give me one second, please.

21 THE COURT: Sure.

22 MS. PENZA: Thank you.

23 THE COURT: I mean I have to tell you it is going to  
24 take quite a while to go through all Mr. Schneider's  
25 objections at this rate. I would have expected the parties to

1 get it together. These are factual disputes that the  
2 defendant has raised. Some of them he may want to back off  
3 because it is not important. Some of them he may want to  
4 insist that we have a hearing on, but I will have a n hearing  
5 on every one that the Government thinks might be worth  
6 pursuing.

7 MS. PENZA: Your Honor, I am sorry.

8 My understanding from the objection letter from  
9 Mr. Schneider was not that he was objecting to him having  
10 stayed at hotels, so I do apologize for not being prepared on  
11 that.

12 THE COURT: Well, that is true. It was not clear  
13 what the objection was.

14 (Pause.)

15 MS. PENZA: Your Honor, I am happy to put Special  
16 Agent Mullen on the stand. I do not have his original report  
17 with me, but he would, I can proffer that he would testify  
18 that Mr. Fuller did tell him that he resided in various  
19 hotels.

20 THE COURT: Well, I think there might be a number of  
21 matters that you want to put him on the stand for, so put that  
22 in your notes.

23 MS. PENZA: Okay.

24 THE COURT: We have an ongoing dispute as to  
25 paragraphs 4 and 5.

1           Look, I take the PSR very seriously and I take the  
2 defendant's right to object to statements in the PSR very  
3 seriously. If the defendant objects to a statement in the  
4 PSR, I am going to find out whether it was true or not by a  
5 preponderance of evidence.

6           And by the way, the issue is not whether he resided  
7 in various hotels, the issue is whether he told the agent he  
8 resided in various hotels.

9           MR. SOLOWAY: You know, Judge, I am just going to  
10 make a suggestion.

11           THE COURT: Okay.

12           MR. SOLOWAY: You know, I know I joined in  
13 Mr. Schneider's letter in the submission that I made.

14           THE COURT: Yes, you did.

15           MR. SOLOWAY: Yes. And since then, you know, there  
16 have been submissions relating to various matters. To be  
17 clear with the Court, candid with the Court, of course, you  
18 know, I really haven't gone through, as I should have, the  
19 details of these objections.

20           You know, I think that we might be able, however,  
21 to -- and I think that, you know, if she is going to put on  
22 the agent on issues like this, it is going to raise 3500  
23 material issues.

24           THE COURT: Look, I expect Mr. Schneider might have  
25 had some suggestion from his client as to what to object to --

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1 MR. SOLOWAY: It would seem so.

2 THE COURT: -- and it may be that with abundant  
3 counseling the defendant could come away thinking, well, maybe  
4 that is not worth objecting to.

5 MR. SOLOWAY: Right.

6 THE COURT: If you would like the opportunity to  
7 have a conversation, we will put this off until you do.

8 MR. SOLOWAY: Okay.

9 THE COURT: But I do want to go through, and we DO  
10 not have to have the back and forth, I just want to identify  
11 what the issues are as I see them. Then you can confer with  
12 Mr. Fuller, you can confer with the Government, and next time  
13 we convene we will get to what I thought we would today, which  
14 is what is really in dispute. And if it is in dispute, how is  
15 the Government to prove it because it is the Government's  
16 burden on all of these statements.

17 Now, I think the next one, for example,  
18 Mr. Schneider says he looked through the photographs and he  
19 thinks most of them are not child pornography, most are child  
20 erotica. Well, if I have got to look at 1588 images of child  
21 pornography alleged and 678,287 of erotica alleged I will do  
22 that, but I think you all ought to do that, see if you have a  
23 disagreement, and then show me the pictures on which you  
24 disagree. Okay? Because I am going to find facts based on  
25 the PSR unless the Government withdraws an allegation of the

1 PSR, which it is also free to do. I am not asking the  
2 Government to do that, I am just saying this is the process by  
3 which you resolve disputes to factual allegations in the PSR.

4 MS. PENZA: Your Honor, I don't think there's any --  
5 the Government's position regarding paragraph 8, we have  
6 always offered to make the images accessible to Mr. Soloway.  
7 In fact, I believe there was even a -- he even made  
8 discussions -- had discussions with the agent. So right now  
9 the Government has presented some of the more violent images.  
10 They are only some of the 1588 images of child pornography.

11 We have no objection to the math that Mr. Schneider  
12 did if there were 678,000 images of child erotica as well, but  
13 it is not really an objection.

14 THE COURT: Okay, so you are willing to go along  
15 with Mr. Schneider's recharacterization of that paragraph, is  
16 that right?

17 MS. PENZA: Your Honor, I just -- it doesn't sound  
18 like an objection. It's not a recharacter -- I am happy to  
19 argue that ultimately what Mr. -- no, I am not happy to go  
20 along with Mr. Schneider's recharacterization, but what I can  
21 tell you is that the images -- that there are child images  
22 that are child pornography.

23 I have no idea what Mr. Schneider meant when he  
24 wrote: Very few of the images viewed by counsel at that time  
25 appeared to meet the legal standard for child pornography,

1 though some are obviously child pornography under the  
2 statutory definition.

3 THE COURT: Well, I guess it is true that I could  
4 overrule the objection on the ground that he does not appear  
5 to have looked at everything and is just noting that the ones  
6 he looked at were mostly not child pornography. I am not sure  
7 that is relevant.

8 MS. PENZA: Well, Your Honor, right in Government  
9 Exhibit 2 you can see images of pre-pubescent children being  
10 penetrated by adult men.

11 THE COURT: Look, the question is, is paragraph 8  
12 correct?

13 Paragraph 8 says there is 1588 images of child  
14 pornography, 678,287 images of erotica where the age of the  
15 victim was difficult to determine, and ten video files  
16 containing child pornography.

17 Does the defendant dispute that?

18 THE DEFENDANT: I'm sorry, sir?

19 THE COURT: I am asking your lawyer.

20 Does the defendant dispute the numbers and the  
21 description of those numbers set forth in paragraph 8?

22 Mr. Schneider's objection suggests there is some  
23 dispute. Is it disputed or not? You do not have to answer  
24 now, you are going to go back and talk to him.

25 MR. SOLOWAY: Right.

1                   THE COURT: But that is one of the things I have to  
2 resolve. I can resolve it by the defendant saying, No, we  
3 don't dispute that. I can resolve it by the Government  
4 saying, We don't need those numbers, we'll do other numbers.

5                   I am not urging anyone to do anything, I am just  
6 saying I have to resolve it.

7                   MR. SOLOWAY: It doesn't sound to me, I have to say,  
8 that Mr. Schneider is disputing. He's sort of making an  
9 observation that doesn't necessarily directly dispute. So if  
10 you want me to --

11                  THE COURT: Well, it is not in the argument section  
12 of the letter as to what the sentence should be, it is in the  
13 objection section of the letter. It says Objection, and then  
14 it lists the paragraphs to which he is objecting.

15                  It is fine, Mr. Soloway, if you want to tell me,  
16 Well, we are not really objecting, we just want to make that  
17 argument when it comes to sentencing. You do not have to do  
18 that now.

19                  MR. SOLOWAY: No, we don't.

20                  THE COURT: I am just saying if I get a letter from  
21 a defense attorney saying, Here are my objections, I object to  
22 paragraph 8; I have got to do something about that. Okay?

23                  Do not feel pressured to do it today. Talk about  
24 it. Talk to each other. Most of these things, when the  
25 parties talk to each other, are usually resolved without a

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1 Fatico hearing, but you have to talk because right now I have  
2 objections.

3 Okay, paragraph --

4 MR. SOLOWAY: I just want you to know that  
5 Mr. Fuller is indicating that he wants to withdraw -- having  
6 discussed it with him, he wants to withdraw the objections.

7 THE COURT: Yes, your can. That's fine. Objections  
8 deemed withdrawn. So I am not going to resolve that.

9 Paragraph 8 stands.

10 Oh, he is withdrawing all the objections?

11 MR. SOLOWAY: That's correct, Judge.

12 THE COURT: Thank you very much.

13 Okay, with all the objections in Mr. Schneider's  
14 letter having been withdrawn, are there any other factual  
15 issues other than the incidents that we have just heard the  
16 witness testify about and the medical condition on which I  
17 need to take evidence? Anything else?

18 Does the Government identify anything in dispute?

19 MS. PENZA: No, Your Honor, not with the objections  
20 withdrawn.

21 THE COURT: Okay.

22 Mr. Soloway, do you need any additional time before  
23 we determine that those are the only two issues that have to  
24 be determined?

25 (Pause.)

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1                   MR. SOLOWAY: I would say, Judge, with the  
2 objections withdrawn, and that's what Mr. Fuller wants to do,  
3 that we are ready to proceed to -- did you have a specific  
4 question that you had put to me about where we were going from  
5 here, Judge?

6                   THE COURT: Well, I know where we are going from  
7 here. The purpose of today is for me to resolve any factual  
8 issues. I have heard testimony for the first time.

9                   MR. SOLOWAY: Right.

10                  THE COURT: I got exhibits for the first time. I  
11 got voluminous exhibits from you yesterday afternoon,  
12 Mr. Soloway. So I cannot resolve everything today, but if I  
13 have got all the evidence I need to take, I am prepared to  
14 schedule sentencing, at which time I will announce my  
15 resolution of the two disputed factual issues that we have  
16 identified and impose sentence.

17                  MR. SOLOWAY: Great.

18                  THE COURT: Does that sound right?

19                  MR. SOLOWAY: Yes.

20                  THE COURT: Okay.

21                  Let's do, Melonie, October 6th? What time?

22                  THE COURTROOM DEPUTY: October 6th at 9:30 a.m.

23                  MS. PENZA: I'm sorry, Your Honor, may I? One more  
24 request regarding the medical issues.

25                  THE COURT: Yes.

1 MS. PENZA: Given Mr. Soloway's submission  
2 yesterday.

3 THE COURT: Right.

4 MS. PENZA: I would like the opportunity to speak,  
5 especially to Dr. Toye. I was hoping that the Court would  
6 order that she be instructed to speak to me. In light of  
7 HIPAA considerations, I assume that she will not do so absent  
8 a court order. And so I would like the Court to order that  
9 and I will engage in that promptly and inform the Court  
10 whether there is any additional evidence the Government would  
11 like to present on the medical issues.

12 THE COURT: Well, that is an interesting issue.

13 Is defendant willing to consent to waiver of  
14 physician/client privilege?

15 You do not have to tell me now. Here is the  
16 situation --

17 MR. SOLOWAY: How about --

18 THE COURT: Go ahead.

19 MR. SOLOWAY: Can I confer with Ms. Penza for a  
20 second, Judge?

21 THE COURT: Yes. We also take a ten-minute break,  
22 if you want. We can do anything you want.

23 MR. SOLOWAY: No, I don't think we need ten minutes.

24 THE COURT: All right, we will take a minute then  
25 while you confer with her.

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1 (Pause.)

2 MR. SOLOWAY: I thought it was some other name, but  
3 now I know who we're talking about.

4 Judge, Ms. Penza can talk to Amanda Toye about  
5 Mr. Fuller's treatment. He waives the privilege on that, the  
6 physician/patient privilege, so go ahead.

7 THE COURT: Okay. Get me an order, I will sign it  
8 if you can give it to her.

9 MS. PENZA: Okay.

10 THE COURT: And then talk.

11 MS. PENZA: Thank you, Your Honor.

12 THE COURT: Can we get that all done soon so we can  
13 go forward on October 6th because I really want this done?

14 MS. PENZA: Yes, I will have you the order today or  
15 tomorrow.

16 THE COURT: Well, more important than that, can you  
17 have the conversation and get me something on it so that  
18 Mr. Soloway also has a chance to respond to it if he wants to?

19 MS. PENZA: Of course, as soon as she is available.

20 THE COURT: So let's leave it on for October 6th at  
21 9:30, and it is my intent to proceed with sentencing on that  
22 day.

23 Anything else?

24 MR. SOLOWAY: Wait, October 6th?

25 THE COURT: Do you have a problem?

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1 MR. SOLOWAY: No, no.

2 THE COURT: October 6th at 9:30. See you all then.

3 MS. PENZA: Thank you, Your Honor.

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5 (Matter adjourned.)

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